

MANDATE

N.Y.S.D. Case #
10-cv-4704(WHP)

11-559-cv

Sarno, v. Midland Credit Management, Inc., et al.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals
 2 for the Second Circuit, held at the Daniel Patrick Moynihan
 3 United States Courthouse, 500 Pearl Street, in the City of New
 4 York, on the 22nd day of September, two thousand and eleven.

5 PRESENT: GUIDO CALABRESI,
 6 RICHARD C. WESLEY,
 7 GERARD E. LYNCH,
 8 *Circuit Judges.*

USDC SDNY
 DOCUMENT
 ELECTRONICALLY FILED
 DOC #: _____
 DATE FILED: October 13, 2011

13 STEPHEN L. SARNO, INDIVIDUALLY AND ON BEHALF OF A CLASS,
 14

15 *Appellant,*

16 -v.-

17 11-559-cv

18 MIDLAND CREDIT MANAGEMENT, INC., MIDLAND FUNDING LLC,
 19

20 *Appellee.*

21
 22 FOR APPELLANT: DANIEL EDELMAN (Cathleen Combs, *on the*
 23 *brief*), Edelman, Combs, Lattner, &
 24 Goodwin, LLC, Chicago, IL.

25 FOR APPELLEE: PETER T. SHAPIRO (Jeffry A. Miller, Jamie
 26 R. Wozman, *on the brief*), Lewis Brisbois
 27 Bisgaard & Smith LLP, New York, NY)

28
 29 Appeal from the United States District Court for the
 30 Southern District of New York (Pauley, J.)

1 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**

2 **AND DECREED** that the judgment of the United States District
3 Court for the Southern District of New York be **AFFIRMED**.

4 Appellant appeals from a judgment of the United States
5 District Court for the Southern District of New York
6 (Pauley, J.), dismissing Appellant's complaint under Federal
7 Rule of Civil Procedure 12(b)(6) for failure to state a
8 claim upon which relief could be granted. We assume the
9 parties' familiarity with the underlying facts, the
10 procedural history, and the issues presented for review.

11 Section 1692g of the Fair Debt Collection Practices Act
12 ("FDCPA") requires a debt collector to provide debtors with
13 written notice of their validation rights. 15 U.S.C.
14 § 1692g. A debt collection notice that overshadows or
15 contradicts the validation notice violates § 1692g of the
16 FDCPA. *Savino v. Computer Credit, Inc.*, 164 F.3d 81, 85 (2d
17 Cir. 1998); *Clomon v. Jackson*, 988 F.2d 1314, 1319 (2d Cir.
18 1993). A debt collector may not use "false
19 representation[s] or deceptive means to collect or attempt
20 to collect any debt or to obtain information concerning a
21 customer." 15 U.S.C. § 1692e(10). The "test for
22 determining whether a collection letter violates [§ 1692g or

1 § 1692e(10)] is an objective standard based on the 'least
2 sophisticated consumer.'" *Clomon*, 988 F.2d at 1318; see also
3 *Russell v. Equifax A.R.S.*, 74 F.3d 30, 34 (2d Cir. 1996).

4 Appellant asserts that Midland's collection letter
5 violated the FDCPA because it included a sentence (following
6 the statutorily required notice under § 1692g), which read:
7 "Please remember, even if you make a payment within 30 days
8 after receiving this notice, you still have the remainder of
9 the 30 days to exercise the rights described above."

10 Even as read by the least sophisticated consumer, that
11 sentence unambiguously referenced *only* the rights described
12 in the statutorily required notice that immediately preceded
13 it. Because the letter merely informed Sarno that partial
14 payment would not affect the rights provided for in § 1692g,
15 it did not overshadow or contradict the § 1692g notice and
16 was not false, misleading, or deceptive. Therefore, Sarno
17 failed to state a claim upon which relief could be granted
18 and his complaint was properly dismissed.

19 For the foregoing reasons, the judgment of the district
20 court is hereby **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine Hause Wolfe



Catherine  Wolfe